# In the Supreme Court of the United States

OCTOBER TERM, 1975

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No. 75-1140

FRANK RUSSO, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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Petitioner contends that the trial court's instructions to the jury were inadequate because they omitted an essential element of the offense with which he had been charged and improperly informed the jury that there did not appear to be any dispute in the evidence relating to two additional elements of the offense. He also contends that the court erred in denying his request for the production of a transcript of the grand jury testimony of a defense witness.

After a jury trial in the United States District Court for the Southern District of New York, petitioner and co-defendant Joseph Natale were convicted of having conspired to collect extensions of credit by extortionate means and of having used extortionate means to collect extensions of credit, in violation of 18 U.S.C. 2 and 894.[1] Peti-

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[1]Petitioner and Natale were acquitted of having attempted to obstruct commerce by extortion, in violation of 18 U.S.C. 1951. A third defendant, John Conti, was acquitted on all counts.

tioner was sentenced to concurrent prison terms of five years on each count. The court of appeals affirmed on November 28, 1975. The petition for a writ of certiorari was not filed until February 11, 1976, and is therefore substantially out of time under Rule 22(2) of the Rules of this Court. The issues raised in the petition do not, in any event, warrant further review.

The petition for a writ of certiorari filed by petitioner's co-defendant Joseph Natale is currently pending in this Court in No. 75-894 (filed December 23, 1975). Petitioner and Natale have raised precisely the same issues in their petitions, and the factual context in which those issues have arisen is identical. For the reasons discussed at some length in our Memorandum in Opposition in No. 75-894, we submit that petitioner's contentions are without merit.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

APRIL 1976.

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[2]We are serving on petitioner's counsel a copy of our Memorandum in Opposition in No. 75-894.